CONSENT FOR SERVICES

A general consent is required for each person prior to clinical/personal health service provision. The general consent is obtained as part of the registration process. The signed consent is valid for one year from date signed. (See PSRS Section of AR Volume II for the Registration, Authorizations, Certifications and Consents Form, CH5 or CH5-B.) A general consent statement will be reviewed and signed by the patient, parent or legal representative (legal guardian, legal custodian, or an adult with Power of Attorney rights). This consent will cover all general medical services.

For WIC certification services only, a minor patient seeking WIC as pregnant, a parent, or legal representative may sign the general consent form and provide current health data or birth measures, income and diet information. A caregiver or proxy, presenting on behalf of a minor patient seeking WIC certification services, many sign a limited consent in the form of a CH5-WIC or CH5B-WIC (see "Use of Proxies" in the AR, Volume II, WIC Section). Services that require more in-depth explanation (informed consent) will require an additional signature after the patient, parent or legal representative has been given adequate information to make an informed decision about the service or treatment to be rendered. Guidelines for who may give consent are contained on the following pages.

When providing health services, it is essential that the health professional ensure to the extent possible that the patient, parent or legal representative fully understands the treatment being provided.

With any procedure or treatment of a patient, there are certain risks that are present. It is the duty of the medical professionals to be aware of the risks and inform the patient of the procedure to be performed, acceptable alternative procedures or treatments and substantial risks and hazards inherent in the proposed treatments or procedures, which are recognized among other health care providers who perform similar treatments or procedures. (KRS 304.40-320)

Informed Consent **MUST** be completed and signature obtained by the medical staff person providing the service. This consent must be signed and dated by the patient, parent or legal representative.

"Informed consent" comprises seven (7) basic elements. To help remember these elements, think of the word **"BRAIDED"**:

- **B**enefits of the drug, procedure, service.
- **R**isks of the drug, procedure, service.
- **A**lternatives to the drug, procedure, service.
- **I**nquiries about the drugs, procedures, services are the patient's, parent or legal representative's right and responsibility.
- **D**ecision to refuse the drug, procedure, and service without penalty is the patient's, parent or legal representative's right.*

- **E**xplanation of the drug, procedure, service is owed the patient, parent or legal representative.
- **D**ocumentation that the health professional has covered each of the previous six points, usually by use of a consent form or statement.

Certain procedures or services require **specific consent forms** (See PHPR Family Planning Section):

- Federally required Consent for Sterilization (OMB 0937-0166)
- Consent for Norplant Removal (ACH-266)
- Consent for Insertion/Removal Intrauterine Device (IUD) (ACH-280)
- Consent for deferring a physical examination for three (3) months for Oral Contraceptives and Depo Provera (ACH-264B)
- Informed Consent for Vaccines (IMM-1)
- Informed Consent for Family Planning Method (FP-1)
- Informed Consent and Waiver of Liability for Administration of Depo Provera Contraceptive (FP-2)

*A patient's decision to refuse a procedure (such as hemoglobin or hematocrit) may cause the person to be ineligible for a service that requires the procedure to determine eligibility (see specific service guidelines).

I. GUIDELINES FOR CONSENT ARE AS FOLLOWS:

A. The patient is a minor (under 18 years of age - according to KRS 2.015) and is living with her/his parent(s), legal guardian, or under the custody or control of the Cabinet for Health and Family Services. In these cases, either the parent, legal representative, or a Cabinet for Health and Family Services social worker may legally give consent, as applicable.

B. Exceptions to parental or legal representative consent for minors (patients under 18 years of age) to receive services are:

- Patient is under 18 years of age and has contracted a lawful marriage (and therefore emancipated) and may give consent for services, provided associated risks are fully comprehensible to him/her (KRS 214.185).

- Patient is under 18 years of age, unmarried and has borne or fathered a child. The patient may give consent for services for her/his child and herself/himself without the consent of the patient's parent or legal representative (KRS 214.185).

- Patient is under 18 years of age and seeks diagnosis and/or treatment for sexually transmitted disease, pregnancy, alcohol and/or drug abuse or

addiction. The local health department may treat the minor for sexually transmitted disease, contraception, pregnancy or childbirth upon consent of the minor and without the consent or notification of the patient's parent or legal representative. Treatment shall not include inducing of an abortion or the performance of a sterilization operation (KRS 214.185).

- Patient is a minor and victim of a sexual offense. He/she, even though a minor, may consent to examination by a physician and such consent is not subject to disaffirmance because of minority. Consent of the patient's parent or legal representative is not required for such an examination. (KRS 216B.400).

C. The patient is 18 years of age or older who is mentally disabled. If a patient has been adjudged by a court to be mentally disabled, then the court appointed guardian has legal authority to give consent. (KRS 387.660)

D. The patient is a minor and in custody of the Court or committed into Foster Care. Foster Parents should not sign consent for "medical services" performed at the local health department, however they may sign for Women, Infant, Children (WIC) services (see "Use of Proxies" in the AR, Volume I, WIC Section). For a child in foster care, LHDs should contact the local Department for Community Based Services (DCBS) Social Services Worker (SSW) or supervisor if a child needs medical services. The SSW or supervisor will determine the type of custody designation the child has been assigned. The LHD may ask for a copy of the DPP-106A (CHFS Authorization for Medical Treatment) to validate the type of custody designation the child has been assigned. If the child has entered care but has not been committed, only a birth parent or judge can authorize treatment. The SSW will need to communicate with the judge or parent. Once the child is committed, the SSW may authorize treatment. If there is an **"emergency"** situation, the caregiver (foster parent) **may authorize** treatment if the SSW (child's worker) or FSOS (supervisor) cannot be reached. LHDs may allow SSWs to sign consent for medical services prior to services being rendered, but no more than thirty (30) days prior to the service.

The bullets below are excerpts from the Cabinet for Health and Family Services, Department for Community-Based Services, Division of Permanency and Protection policy in regard to consents for medical services:

- *If the child is in the **emergency custody or temporary custody** of the Cabinet, only a parent or judge grants approval for medical procedures. A blanket consent by the court for medical services that are for prevention and treatment is sufficient. In an emergency when the child requires immediate medical attention and the parent or judge cannot be located, the social worker or supervisor authorize treatment. When the social worker or supervisor cannot be located, the **caregiver** authorizes treatment.*

- *If the child is **committed**, the social worker or supervisor may authorize treatment. In an emergency, when a child needs immediate medical treatment and the social worker or supervisor cannot be notified, the **caregiver** authorizes treatment.*

- *If a child is on a **voluntary commitment**, the social worker or supervisor consents to treatment when a parent cannot be located, in cases of serious illness or major surgery. In an emergency, when the child requires immediate medical attention and the social worker or supervisor cannot be located, the **caregiver** authorizes emergency medical treatment.*

A related powerpoint entitled "*Understanding DCBS Custody and Medical Consent for Services*" can be found on the PHPR webpage under "Related Content".

E. The patient is a minor involved in a child custody issue between parents. In the cases of shared custody through divorce decree and the parents cannot agree on consent for services, the LHD should try to attain information from the divorce decree stipulating which parent has responsibility for obtaining routine medical care for the minor child. In situations where there is no "child custody order" in place at the time and parents cannot agree on consent for service, authorization only needs to be executed by one (1) parent. However, be aware of your agency decision and your agency should not become involved in a domestic dispute and do not violate HIPAA laws. If in doubt, the LHD should contact their local legal counsel for advice and guidance.

F. Minors who are probated or committed to Kentucky Department of Juvenile Justice (DJJ) are assigned and supervised by a Juvenile Service Worker (JSW). While in committed care of DJJ, the assigned JSW or supervisor may sign consent for needed medical/treatment services. For probated youths, the parents shall sign for all medical services.

When intensive treatment is necessary, youth may be committed to the DJJ. Committed youth are not always removed from the home. Per state law, commitment will generally end at the age of eighteen (18) but can continue until the age of twenty-one (21) in certain circumstances.

The Kentucky Department of Juvenile Justice contracts with several agencies through-out the state for out-of-home placement services. When a youth is determined to need an out of-home placement, other than a DJJ facility, consideration is given to place the youth in the nearest alternative program that best meets the youth's needs. This helps the youth stay connected to his or her family with visits and counseling, as well as transition/aftercare services back to the youth's home, school, and community.

The Department of Juvenile Justice operates or contracts with various Day Treatment Centers, Group Homes, Residential programs, Independent Living programs, foster homes (both traditional and therapeutic), psychiatric treatment centers, and community agencies to provide a continuum of services for youth committed or probated to the Department.

For additional information: http://djj.ky.gov/

II. LEGAL GUARDIANSHIP

A. A legal guardian is a person appointed by District Court to manage the affairs of a minor (a person under eighteen years old) or an incompetent adult, or any one else who does not have the ability ("legal capacity)" to manage their own affairs. A Conservator, appointed in the same way, is someone who manages only the financial affairs of such a person who is called the "Ward".

B. KRS Chapter 387 contains laws covering guardianship and conservatorship. KRS 387.065 covers powers, duties, and responsibilities of guardians; such as: "(3)(b) Consent to medical or other professional care, treatment or advice for the ward,…".

C. Guardians should present the appropriate court documents indicating their appointment of guardianship prior to services rendered.

D. CHFS's webpage for the Division of Guardianship (a public guardianship program) can be found at: http://chfs.ky.gov/dail/guardianship.htm

III. USE OF "POWER OF ATTORNEY"

A. Parents/legal guardians may voluntarily complete a "Standard Power of Attorney for Medical/School Making Decisions (AOC-796)" on a minor child. This completed and notarized Power of Attorney allows the designated person to consent for most medical services for the minor child, with the exceptions of HIV/AIDS testing, controlled substance testing, or any other testing for which a separate court order or informed consent is required or applicable under law. Consent for immunizations is allowed under this type Power of Attorney. A copy of the Kentucky "Standard Power of Attorney for Medical/School Making Decisions (AOC-796)" can be obtained at: **http://courts.ky.gov/NR/rdonlyres/EDBE727A-E1A1-452C-9A24-C25EFC2C73A9/0/796.pdf**

B. Other "Medical Power of Attorney" for healthcare should contained specific instructions and designate a healthcare proxy to make healthcare decisions when

the principal party is unable to make them himself/herself. These documents are required to be notarized.

C. "Power of Attorney" to be revoked, rescinded, or terminated should be in writing and include the name of the Grantor, Attorney-in-Fact, and the date. These documents should be duly notarized.

D. Historically, Kentucky has a large number of children who are being reared by relatives who do not have legal guardianship, but are the primary caregivers of the child. These relatives should, if possible obtain a notarized legal statement (preferably an AOC-796 Power of Attorney) from the patient's parent or legal representative allowing them the ability to consent to medical care for these children. Refer to "Use of Power of Attorney" above for information required as part of a statement and any exceptions. Efforts should be made to assist these families and children seeking service.

A helpful resource is a handbook for grandparents and other caregivers provided by the Kentucky Cabinet for Health and Family Services entitled ***"HELP – A Handbook for Kentucky Grandparents and Other Relative Caregivers".***
http://www.bgadd.org/pdf/aging/HELP-A%20Handbook%20for%20Kentucky%20Grandparents.pdf

E. Kentucky Revised Statutes relating to Power of Attorney are **KRS 27A.095, KRS 304.27-080** and **KRS 386.093.**

IV. "GENERAL CONSENT" WHEN PARENT/LEGAL REPRESENTATIVE CANNOT BE PRESENT AT VISIT

When an appointment is made for a child and the parent or legal representative is unable to accompany the child, the following should be followed:

A. The LHD should mail to the parent or legal representative prior to, but no more than 30 days:
- Appropriate document (CH-5B), with instructions for completion and return
- LHD HIPAA Notice of Privacy Practices and the Receipt for the Notice of Privacy Practices, if this is patient's first medical service provided by LHD

B. At the scheduled appointment or prior (but no more than 30 days) the following documents should be returned to the LHD:
- The CH-5B, completed and signed by the parent or legal representative, should accompany the child at the visit or should be returned to the LHD prior to the scheduled appointment
- A daytime phone number where the parent or legal representative can be reached
- If applicable, the Receipt of the Notice of Privacy Practices

C. If someone with legal authority does not present at the visit with the child, general consent may be obtained by telephone:
- The LHD provider should place a telephone call to the parent or legal representative and explain thoroughly the instructions for collecting the demographics, income, and any other pertinent information required for **general consent for service.**
- Information collect should be documented on a CH-5B.
- Identify the reason for visit.
- The parent or legal representative should state understanding and give verbal consent.
- Another LHD employee should listen to the phone conversation to confirm the parent or legal representative's verbal consent. The person presenting with the child should also witness the conversation.
- All information should be documented in the medical record.
- The second LHD employee should document in the medical record to confirm the verbal consent.
- The LHD should follow up with arranging for a convenient time for the parent or legal representative to sign the CH-5B.

D. Persons or agencies having legal custody may provide consent. Foster parents, resource parents or pre-adoptive parents **cannot** sign for routine medical services for children in their care. The appropriate signature should be obtained from the presiding judge, parent, or representative of the Commonwealth as designated by DCBS.

V. "INFORMED CONSENTS" FOR IMMUNIZATIONS WHEN PARENT/LEGAL REPRESENTATIVE CANNOT BE PRESENT AT VISIT (*a General Consent should also be completed if applicable*)

The Kentucky Immunization Program recommends the following when an appointment is made for a child and the parent or legal representative is unable to accompany the child, the following should be followed:

A. The LHD should **mail** to the parent or legal representative:
- Appropriate vaccine information materials
- The LHD consent form

1) A statement which includes the LHD telephone number and information on how calls are taken

2) The parent should be encouraged to call for further information/questions. The LHD should encourage the parent or legal representative to provide a

phone number where they may be reached on the day the immunizations are to be given in case questions or concerns arise.

3) The **signed consent form** with the parent's emergency phone number **must** be returned to the LHD.

4) The parent or legal representative should keep the vaccine information materials for future reference.

B. Informed consent may be obtained **by telephone**.

1) The LHD provider should place a telephone call to the parent, explain the proposed procedure thoroughly and provide **informed consent.**

2) The LHD provider should explain the service to be performed, the risks, side effects, benefits, alternatives and comfort measures for the procedure.

3) The parent or legal representative should state understanding and give verbal consent.

4) Another LHD employee should listen to the phone conversation to confirm the parent or legal representative's oral consent. This information should all be documented in the medical record.

5) The second LHD employee should document in the medical record to confirm the oral consent.

6) The LHD should follow up with asking the parent or legal representative to sign the consent form.

C. Persons or agencies having legal custody may provide consent. Foster parents, resource parents or pre-adoptive parents **cannot** sign for immunizations for children in their care. The appropriate signature should be obtained from the presiding judge, parent, or legal representative.

Note:
Exception to this policy is allowed for WIC services. Refer to the WIC Section, WIC Program Eligibility Requirements.